IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7407 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARESHBHAI CHIMANLAL SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7407 of 2001

MR DM THAKKAR for Petitioner No. 1

MR K.T.DAVE, AGP for Respondents No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 01/11/2001

ORAL JUDGEMENT

By means of filing this petition under Article

226 of the Constitution of India, petitioner/detenue who has been detained by the District Magistrate, Gandhinagar vide order dated August 24, 2001 (Annexure-A to the petition), in exercise of the powers conferred under sub-Section 2 of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 ('the P.B.M. Act' for short hereinafter), has challenged the said order and prayed to issue a writ of habeas corpus or any other writ, order or direction quashing and setting aside the order of detention and set him at liberty forthwith.

2. The averments made in the petition and the grounds of detention manifest that petitioner is a wholesaler, dealing in food grains and edible oils under the name Shakti Corporation at Village Pethapur in Gandhinagar District. On July 13, 2001, on the basis of information received by the Pranth Officer, Gandhinagar the stock of wheat meant for distribution to the ration card holders of the drought affected villages is diverted to some other places instead of the fair price shops of the concerned village. The Truck bearing No. GJ-18T-993 was intercepted on July 13, 2001 near Indira Bridge, Hansol. As per the statement of the Truck Driver, the stock of wheat loaded in the Truck was lifted from the Government godown by the petitioner and the same was to be delivered to Nandi Proteins Ltd., Naroda. The said stock was marked as Food Corporation of India. Thus, the said stock of wheat meant for public distribution was purchased by the petitioner from the fair price shop owner for disposing the same by way of black marketing. Another Truck bearing No. GQD-4276 was also intercepted on July 13, 2001. As per the statement of the Driver of the said Truck, the stock of 10,000 kg wheat was lifted from the Government godown under the instructions of petitioner and same was to be delivered to Nandi Proteins Ltd., Naroda. Thus, the stock of wheat meant for public distribution was illegally purchased by the petitioner from the fair price shop owner for the purpose of selling it at a higher price and thereby the petitioner had indulged into blackmarketing activity. The District Magistrate, Gandhinagar, therefore, found it necessary to detain the petitioner and accordingly, in exercise of powers u/s 3(2) of PBM Act vide an order dated August 24, 2001, has detained the petitioner.

3. Though the petitioner has challenged the order of detention on various grounds, Mr.D.M.Thakkar, learned advocate for the petitioner has restricted his arguments to the effect that though copy of the representation dated September 5, 2001 was received by the detaining

authority on September 6 , 2001, and it was rejected on September 14, 2001 and thereafter it was forwarded to the State Government on the same date. Therefore, there is a delay of 8 days on the part of the detaining authority in forwarding the representation of the petitioner/detenu to the State Government. He further contended that the detaining authority could not have rejected the representation as the order of detention was approved by the State Government on September 4, 2001 and thereafter it has become functus officio. He, therefore, further contended that there is a delay of 8 days on the part of the detaining authority in forwarding the representation to the State Government and it vitiates the order of detention itself and therefore, according to the the learned advocate for the petitioner, petition deserves to be allowed by quashing and setting aside the order of detention and setting the petitioner/detenu at liberty forthwith.

4. Mr. K.T.Dave, learned AGP has appeared for respondent Nos. 1, 2 & 3 and opposed the petition by filing two separate affidavits; one sworn by P.G.Vyas, Deputy Secretary to the Government of Gujarat, Food, Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar and the another sworn by S.J.Haider, District Magistrate, Gandhinagar whereas Ms P.J.Davawala, learned counsel has appeared for respondent No. 4, Union of India, and contested the petition by filing affidavit in reply sworn by S.L.Meena, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi.

5. Mr. K.T.Dave, learned AGP contended that it is true that the District Magistrate, Gandhinagar has rejected the representation made by the detenu to the State Government vide order dated September 14, 2001, which itself indicates that the District Magistrate has decided the representation made by the petitioner though it has become functus officio and could not have decided the said representation. He further does not dispute the fact that after receipt of the representation by the detaining authority on September 6, 2001 he has forwarded the same to the State Government on September 14, 2001, therefore, there is a delay of 8 days on the part of the detaining authority in forwarding the said representation to the State Government. He, therefore, urged to pass appropriate order in light of the settled principles enunciated by the supreme Court as well as this Court.

6. I have considered the submissions advanced by the

learned advocates appearing for the parties. I have also perused the averments made in the petition and the documents annexed therewith and also considered the affidavits in reply filed by the contesting respondents and the impugned order - Annexure-A.

7. On having perusal of the relevant papers, it is true that the petitioner had made a representation on September 5, 2001 which was received by the detaining authority on September 6, 2001. There is also no dispute that the detaining authority has rejected the said representation on September 14, 2001 and thereafter forwarded a copy of the representation to the State Government on the same day, which was received by the State Government on September 15, 2001 and decided on September 19, 2001.

8. The only question which calls for consideration is as to whether there is a delay on the part of the District Magistrate, Gandhinagar in forwarding the said representation to the State Government. As observed in earlier paragraph, representation was received by the detaining authority on September 6, 2001 which was sent to the State Government by the detaining authority on September 14, 2001, therefore, there is a delay of 8 days on the part of the detaining authority in forwarding the said representation to the State Government. There is no plausible explanation coming forth in the reply affidavit filed by the detaining authority as to why there is a delay of 8 days on the part of the detaining authority in forwarding the said representation to the State Government.

9. A similar question arose before the Division Bench of this Court in the case of URMILABEN GANDHI V. COMMISSIONER OF POLICE, SURAT CITY AND OTHERS, 1994 (2) GLH (UJ) 10. In the said case delay of five days in considering the representation was not properly explained and hence continued detention was held invalid.

10. In the case of HARISH PAHWA V. STATE OF U.P., AIR 1981 SC 1126, the Supreme Court has observed that representation made by the detenu must be considered immediately and delay invalidates the detention.

11. Applying the aforesaid principles to the facts of the present case, at the cost of repetition, be it stated that the representation which was sent by the detenu on September 5, 2001 was received by the detaining authority on September 6, 2001 and it was forwarded to the State Government on September 14, 2001 and therefore,

admittedly, there is a delay of 8 days in forwarding the representation to the State Government. Therefore, the detenu's right under Article 22(5) of the Constitution is infringed and on this ground, the order of detention is vitiated and the petition deserves to be allowed and the impugned order of detention requires to be quashed and set aside and the petitioner/detenu is required to be set at liberty forthwith.

12. For the foregoing reasons, petition succeeds and is accordingly allowed. The impugned order of detention dated August 24, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*